

# ActBlue

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April 28, 2016

Federal Election Commission  
Mr. Jeff S. Jordan  
Office of Complaints Examination & Legal Administration  
Attn: Donna Rawls, Paralegal  
999 E Street, NW  
Washington, DC 10463

[drawls@fec.gov](mailto:drawls@fec.gov)  
[jjordan@fec.gov](mailto:jjordan@fec.gov)

Re: MUR 7039

Dear Mr. Jordan:

ActBlue is in receipt of a complaint filed by Mr. Brad Woodhouse of the American Democracy Legal Fund, designated Matter Under Review # 7039 by the Federal Election Commission ("FEC" or "the Commission"), and this response is filed on behalf of ActBlue. For the reasons set forth below, the Commission should find that ActBlue has not and could not have violated the Federal Election Campaign Act of 1971 ("the Act") nor any Commission regulations with respect to this complaint. Therefore, ActBlue respectfully requests it be removed from this matter, or at the very least, that no action be taken against it and the complaint against it be dismissed.

## 1. ActBlue

ActBlue is registered with the Commission as a non-connected federal committee and works to increase grassroots participation in the financing of political campaigns. ActBlue operates and maintains the website [www.actblue.com](http://www.actblue.com), which provides Internet-based tools, including optimized contribution forms for Democratic candidates and committees to solicit and process contributions. ActBlue acts as an intermediary, within the meaning of 2 USC § 441a(a)(8), for individual contributions made on the website to Democratic candidates and committees. ActBlue does not solicit contributions for any candidate or committee other than itself.

## 2. The Complaint

In the complaint, the complainant states that Bernie 2016, the Sanders campaign for president, purchased an advertisement on Facebook that encouraged viewers to make contributions to the campaign. A link in the advertisement directed to a Bernie 2016

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contribution form that is hosted on the ActBlue website. *See* Complaint, p. 2. The complaint alleges that Bernie 2016 violated the Act and Commission regulations by failing to include a disclaimer on the Facebook advertisement. The complaint also opines that the lack of a disclaimer on the advertisement itself might not constitute a violation of the Act if a specific disclaimer appeared on the landing page from the link in the ad. However, the complaint fails entirely to mention that the Facebook advertisement included not one, but two links: one that directed to a contribution form on the ActBlue website, and one that directed to the Bernie 2016 website. The landing page of the Bernie 2016 website, predictably, contains all the necessary and required disclaimers.

The complaint does not allege that ActBlue violated the Act or Commission regulations, nor does it name ActBlue as a respondent. The complaint merely states that the presence of ActBlue's disclaimer at the bottom of the landing page does not satisfy the requirements of the Act and is potentially confusing to visitors of that page. *See* Complaint, p. 4. The Commission itself has generated ActBlue as a respondent. Given the presence of the disclaimers on the landing page of the Bernie 2016 website to which the link on the Facebook ad directed, ActBlue should not have been generated as a respondent here and should be released from this matter.

### 3. ActBlue Could Not Have Violated the Act

The complaint alleges that Bernie 2016 violated the Act by failing to place the proper disclaimer on its Facebook ad. The Act requires that whenever a political committee makes a disbursement to fund a public communication, that communication must include the appropriate disclaimer. *See* 52 USC § 30120(a). In this case, ActBlue did not make any disbursement to fund a public communication. ActBlue had no part in paying for or placing the allegedly offending Facebook ad. Therefore, ActBlue could not have violated the Act.

The Commission has ruled that an Internet advertisement which constitutes a public communication may be exempt from the disclaimer requirement under 11 CFR § 110.11(f)(1)(ii), but still requires a disclaimer related to the ad to appear on the landing page of the ad. *See* AO 2010-19. The required disclaimer relates back to the ad. It is not tied to the landing page itself. Since ActBlue did not purchase the Facebook ad, ActBlue could not have violated the Act regardless of whether or not the appropriate disclaimer appeared on the landing page in question.

### 4. The ActBlue Webpage is Not a Public Communication

Pursuant to 11 CFR § 110.11, all public communications require a disclaimer. Communications over the Internet are not considered public communications, except for communications placed for a fee on another person's website. *See* 11 CFR § 100.26. The landing page of the Facebook ad identified in the complaint is a webpage hosted on the ActBlue website. ActBlue does not charge candidates or committees a fee to create such a page. Any member of the public may create a page on the ActBlue website for free. The landing page of the Bernie 2016 Facebook advertisement is therefore not a public communication and does not require a disclaimer pursuant to 11 CFR § 110.11.

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The complaint mentions the disclaimer on the ActBlue webpage solely because it is one of the landing pages for the Bernie 2016 Facebook advertisement. The disclaimer requirement created by AO 2010-19 relates only to the advertisement and only to the party that placed the advertisement. AO 2010-19 does not impose any obligation on ActBlue since it did not place the ad, and the AO does not create a stand-alone requirement that a disclaimer appear on the ActBlue webpage. But for the Facebook advertisement linking to this page, there would be no discussion of a disclaimer on the webpage since the webpage is not a public communication. The effect of AO 2010-19 is not to determine the proper disclaimer for a webpage which just happens to be linked to from an ad. Nor does simply linking to a webpage in an ad convert it into a public communication requiring a disclaimer in and of itself, and the Commission in AO 2010-19 never suggested anything of the sort.


5. The ActBlue Disclaimer Does Not Violate the Act

In addition to public communications, under certain circumstances email messages and websites of political committees must include a disclaimer. *See* 11 § 110.11(a)(1). Because ActBlue is a federal political committee, its website must indicate that ActBlue pays for it. *See* 11 CFR §§ 110.11(b). To satisfy this requirement, ActBlue places the appropriate disclaimer on its website. This is the disclaimer that appeared at the bottom of the landing page linked to by the Bernie 2016 Facebook ad. The disclaimer is mandated by the regulations and is appropriate. ActBlue's disclaimer does not violate the Act.

6. Conclusion

For the foregoing reasons, the Commission should dismiss the complaint against ActBlue.

Respectfully submitted,



Steven Gold  
General Counsel



Melissa Flores  
In-House Counsel



FEDERAL ELECTION COMMISSION  
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### STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

FAX 202-219-3923

MUR # 7039

Name of Counsel: Steven Gold, ActBlue General Counsel & Melissa Flores, ActBlue In-House Counsel

Firm: N/A - In-house

Address: 366 Summer Street, Somerville, MA 02144

Telephone: 617-299-8846

Fax: N/A

E-mail: Flores@actblue.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

4/28/16

Date

*E. Hill*

Signature (Respondent/Agent)

Executive Director

Title

#### RESPONDENT:

ActBlue

(Committee Name/ Company Name/Individual Named in Notification Letter)

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(Please Print)

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(W): \_\_\_\_\_

E-mail: Flores@actblue.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.